



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL-077-FOR; Docket No. OSM-2012-0016]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its Program regarding revegetation success standards. Alabama intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL

REGISTER].

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director,
Birmingham Field Office. Telephone: (205) 290-7280. E-mail: swilson@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Alabama Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1)

and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, Federal Register (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By letter dated June 26, 2012 (Administrative Record No. AL-0664), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Alabama sent the amendment on its own initiative.

We announced receipt of the proposed amendment in the September 5, 2012, Federal Register (77 FR 54490). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 5, 2012.

III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

Alabama 880-X-10C-.62 Revegetation: Standards for Success; and Alabama 880-X-10D-.56 Revegetation: Standards for Success

Alabama proposed to add new subsections 880-X-10C-.62(1)(c) and (d) of its surface mining regulations and 880-X-10D-.56(1)(c) and (d) of its underground mining regulations regarding the revegetation standards for success related to its ground cover requirements and determining stocking success for trees and shrubs. Alabama's new subsections contain substantially the same language as their Federal counterparts at 30 CFR 816.116(b)(3)(ii) and (iii) and 30 CFR 817.116(b)(3)(ii) and (iii), respectively. Concerning its tree and shrub stocking requirements, Alabama replaces the Federal requirement related to the phrase "for 60 percent of the applicable minimum period of responsibility" with the phrase "three years." The minimum applicable period of responsibility for Alabama is five years. Since three years would be 60 percent of the five-year responsibility period, OSM finds the revised language no less effective than the Federal and is approving the changes. Furthermore, Alabama proposed to delete subsections 880-X-10C-.62(2)(c)(iv) of its surface mining regulations and 880-X-10C-.56(2)(c)(iv) of its underground mining regulations regarding tree count requirements on forest land use areas because these subsections became redundant by addition of the

previously mentioned subsections. Therefore, we approve Alabama's deletion of these subsections.

Alabama revised subsections 880-X-10C-.62(2)(e) and (g) of its surface mining regulations and 880-X-10D-.56(2)(e) and (g) of its underground mining regulations regarding ground cover requirements and woody plant standards for areas with the post-mining land uses of recreation, wildlife habitat, or undeveloped land. These proposed changes to Alabama's regulations are counterpart to the Federal regulations at 30 CFR 816.116(b)(3) and 30 CFR 817.116(b)(3). Alabama requires that in order to avoid competition, herbaceous ground cover on areas planted with woody vegetation or planted to food plots shall be limited to that necessary to adequately control erosion. Herbaceous ground cover on areas not planted with woody vegetation or as food plots shall equal or exceed 80 percent. We find that this proposed language is no less effective than the Federal requirement that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. Therefore we are approving the change.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On July 11, 2012, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL-0664-02). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on July 11, 2012, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL-0664-02). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and

ACHP on amendments that may have an effect on historic properties. On July 11, 2012, we requested comments on Alabama's amendment (Administrative Record No. AL-0664-02). We received a comment letter from the Alabama SHPO stating that Alabama's proposed revisions regarding its revegetation success standards will have no adverse effect on cultural resources listed on, or eligible for, the National Registry of Historic Places (Administrative Record No. AL-0664-03). The ACHP did not respond to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Alabama sent us on June 26, 2012 (Administrative Record No. AL-0664).

To implement this decision, we are amending the Federal regulations, at 30 CFR Part 901, that codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal

regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal

regulations involving Indian lands.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by

OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State

submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Ervin J. Barchenger, Regional Director

Mid-Continent Region

November 28, 2012

Date

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901 - ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 901.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * June 26, 2012	* * <u>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]</u>	ASMC sections 880-X-10C-.62(1)(c) and (d); 880-X-10C-.62(2)(c)(iv), (e), and (g); 880-X-10D-.56(1)(c) and (d); and 880-X-10D-.56 (2)(c)(iv), (e), and (g)

[FR Doc. 2013-03776 Filed 02/15/2013 at 8:45 am; Publication Date: 02/19/2013]